

ORIGINAL

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

EDWARD H. KUBO, JR. #2499  
United States Attorney  
District of Hawaii

RONALD G. JOHNSON #4532  
Chief, Violent Crime Section

MAR 10 2004  
at 3 o'clock and 50 min. PM  
WALTER A.Y.H. CHINN, CLERK

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Attorneys for Plaintiff  
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA	)	MAG. NO. 04-222 BMK ✓
	)	
Plaintiff,	)	CRIMINAL COMPLAINT
	)	
vs.	)	
	)	
DAVID ELLIOT,	)	
	)	
Defendant.	)	
_____	)	

**CRIMINAL COMPLAINT**


I, the undersigned complainant, being duly sworn state  
the following is true and correct to the best of my knowledge  
and belief.

Count 1: On or about March 3, 2004, in the District of  
Hawaii, the defendant, DAVID ELLIOT, then being an  
unlawful user of a controlled substance as defined in  
Title 21, United States Code §802, did knowingly  
possess in and affecting commerce firearms, to wit, a  
Colt, Model AR-15, 223 caliber rifle, serial number  
SP88674 and a Mauser, bolt action rifle, serial number  
33314.

I am a Special Agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") assigned to District of Hawaii and that the Complaint is supported by the attached affidavit which is incorporated herein by reference.

  
\_\_\_\_\_  
GORDON HORIYE  
COMPLAINANT

Subscribed to and sworn before me on  
March 10, 2004, at Honolulu, Hawaii  
at 3:50 a.m./p.m.

  
\_\_\_\_\_  
UNITED STATES MAGISTRATE JUDGE  
District of Hawaii

AGENT'S AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

GORDON HORIYE, after being first duly sworn on oath, deposes and says:

1. I am a Special Agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") assigned to District of Hawaii.

2. On March 3, 2004, Officer Wayne Mitsunaga of the Hawaii County Police Department (HCPD), obtained a State of Hawaii search warrant for "Three unpainted wooden coffee cherry drying platforms with white plastic roofing" and "A gray single story wooden residence with blue metal corrugated roofing" all of which were located on a 7.4 acre parcel of land located at 83-5315 Painted Church Road, Captain Cook, Hawaii. The residence was occupied by James Elliott and his brother David Elliott. James Elliott served as the caretaker for the property. Both James Elliott and David Elliott were subsequently arrested.

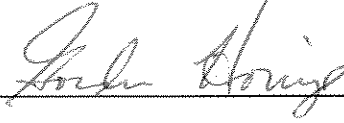
3. Upon executing the search warrant officers recovered approximately 1,103 marijuana plants ranging in size from seedlings to 4 feet tall in the drying platforms. They also recovered paraphernalia associated with the growing and cultivation of marijuana. Officers also recovered in excess of 4.5 pounds of processed marijuana in the "grow room" and in the residence and 4.6 grams of hashish. Field testing was conducted on the processed marijuana and the results were positive. In addition two firearms were recovered that were further identified as a Colt, Model AR-15, 223 caliber rifle, Serial number SP88674 and a Mauser, bolt action rifle, serial number 33314.

4. On March 5, 2004, David Elliott was interviewed by Officer Mitsunaga. David Elliott was advised of his constitutional rights but he waived those rights and agreed to answer questions. David Elliott stated that he has been residing on the property since the early part of January 2004. He stated that he knew his brother James was growing marijuana plants, but he had never seen them. He stated that the marijuana and the firearms that were found in his room were his. He stated that he uses marijuana two times a week. He has been a marijuana user since age 17 or 18 (he is currently 42 years of age). The marijuana that was found in his room was given to him by his brother James. He stated that he acquired the firearms 3 to 4 years ago from a friend who owed him money. He stated that he felt he was doing his friend a favor by taking the firearms.

5. Affiant is aware that marijuana is a Schedule I controlled substance.

6. Aforementioned firearms listed under subheading number three were manufactured outside the State of Hawaii, thus affecting interstate commerce.

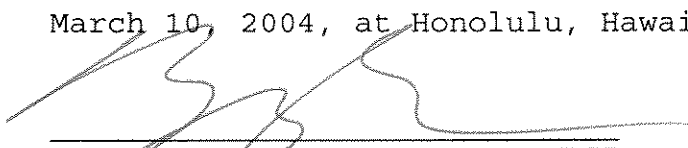
FURTHER AFFIANT SAYETH NAUGHT



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This Criminal Complaint and Agent's Affidavit in support thereof were presented to, approved by, and probable cause to believe that the defendant above-named committed the charged crime found to exist by the undersigned Judicial Officer at 3:50 P.m. on March 10, 2004.

Subscribed to and sworn before me on  
March 10, 2004, at Honolulu, Hawaii.



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UNITED STATES MAGISTRATE JUDGE  
District of Hawaii